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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,426	05/12/2006	Richard A. Rafferty	VM002	7883

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EXAMINER

LE, HUYEN D

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,426	<b>Applicant(s)</b> RAFFERTY, RICHARD A.	
	<b>Examiner</b> HUYEN D. LE	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-23, 25, 26 and 37-49 is/are pending in the application.
- 4a) Of the above claim(s) 44, 45 and 47-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-23, 25, 26, 37-43 and 46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 44, 45 and 47-49 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the receiver tube having a first end that is removably connectable to a hearing aid and a second end that is removably connectable to a receiver of the hearing aid must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. Claims 21-23, 25, 26, 37-43 and 46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original specification does not disclose a receiver tube having a first end that is removably connectable to a hearing aid and a second end that is removably connectable to a receiver of the hearing aid as claimed now in claims 21 and 37.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 21-23, 25, 26 and 37-43, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoest (U.S. patent 5,970,157) in view of Haertl (U.S. patent 4,987,597).

Regarding claims 21, 22, 25, 26, 37, 38, 40 and 41, as best understood with regarding 112, 1st as mentioned above, Yoest teaches an apparatus that comprises a hearing aid (12, 1012, 1014 or 1016), a receiver tube (22, 1028), and an ear wax trap (42', 142, 142', 242, 342) disposed within the receiver tube and between the first end and second end of the receiver tube (figures 3, 3A, 5, 5A, 6, 14, 15, 16).

As broadly claimed, the receiver tube (22, 1028) is removably connectable to a hearing aid (the circuitry portion 1014, 1019, 1020, 1022, or the mounting plate 1016, col. 6, lines 44-59) and removably connectable to a receiver (16, 1018) of the hearing aid (figures 4, 5, 5A, 6, 14, 16).

Yuest does not teach the ear wax trap (42', 142, 142', 242, 342) comprising a membrane as claimed. However, providing a micro-porous membrane for an ear wax trap in the hearing aid is known in the art.

Haertl et al. teaches a micro-porous membrane (14) that comprises foamed and stretched polytetrafluoroethylene for an ear wax trap, and the membrane (14) that is waterproof as claimed (col. 2, lines 3-11, col. 3, lines 11-33).

Therefore, it would have been obvious to one skilled in the art to provide the ear wax trap, as taught by Haertl, in the ear wax barrier of Yuest for better protecting the hearing aid against the penetration both of earwax as well as moisture.

Regarding claims 23 and 39, Haertl does not specifically disclose the micro-porous membrane (14) containing the pores as claimed. However Haertl does teach that the micro-porous membrane (14) has the extremely small pores (col. 2, lines 3-7).

Therefore, it would have been obvious to one skilled in the art to provide any range of extremely small pores in the membrane (14) of Haertl such as 9 billion pores per square inch for better protecting the hearing aid against the penetration of moisture.

Regarding claim 42, Yuest teaches a receiver (16, 824, 1018) having an opening (20, 1026), wherein the receiver tube (22, 1028) is removably coupled to the receiver (figures 4, 5, 5A, 6, 16).

Regarding claim 43, as broadly claimed, Yoest shows a locking mechanism for selectively coupling the receiver tube (22, 1028) to the receiver as claimed (figures 4, 5, 5A, 6, 16).

### ***Response to Arguments***

5. Applicant's arguments filed 02/18/10 have been fully considered but they are not persuasive.

Responding to the arguments about the receiver tube in Yoest, as broadly claimed, the receiver tube (22, 1028) of Yoest is removably connectable to the hearing aid (1014, 1016, 1019, 1020, 1022, col. 6, lines 44-59) and a receiver (16, 1018) of the hearing aid (figures 4, 5, 5A, 6, 14, 16). Further, the Applicant should note that claims 21 and 37 do not claim that the receiver tube is removably connectable a shell of a hearing aid as argued.

Responding to the arguments about the combination of Yoest and Haertl, the examiner has provided the Haert et al. reference for the micro-porous membrane of the ear wax trap. Yoest does not teach the ear wax trap (42', 142, 142', 242, 342) comprising a membrane as claimed. However, providing a micro-porous membrane for an ear wax trap in the hearing aid is known in the art. Haertl et al. teaches a micro-porous membrane (14) that comprises foamed and stretched polytetrafluoroethylene for an ear wax trap (col. 2, lines 3-11, col. 3, lines 11-33).

Therefore, it would have been obvious to one skilled in the art to provide the ear wax trap, as taught by Haertl, in the ear wax barrier of Yoest for better protecting the hearing aid against the penetration both of earwax as well as moisture.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Haertl (US 4,763,752) teaches an elastic hose part (7) that is glued to an earphone (9) of an in-the-ear hearing aid.

Carbe et al. (US patent 5,278,360) teaches the wax guard system (10) comprising a housing (12) which is held to the canal portion (16) of a hearing aid shell by glue.

Campell (US 5,327,500) teaches one end of a plastic tubing or a receiver tube (14) that is glued to the transducer (13), and the opposite end of the tubing that is glued to the cylindrical component (3) located at the output port of the shell.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502.

The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUYEN D. LE/  
Primary Examiner, Art Unit 2614

HL  
April 11, 2010